

1 SENATE BILL 345

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 James G. Taylor

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8 FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

9  
10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR DEDUCTIONS FROM THE NEW  
12 MEXICO GASOLINE TAX AND SPECIAL FUEL EXCISE TAX PAID BY OUT-OF-  
13 STATE TERMINALS AT WHICH THE GASOLINE OR SPECIAL FUEL TO BE  
14 IMPORTED INTO NEW MEXICO WAS LOADED; REQUIRING SURETY BONDS  
15 FROM CERTAIN WEIGHT DISTANCE TAX TAXPAYERS AND SPECIAL FUEL  
16 USERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 7-13-4 NMSA 1978 (being Laws 1991,  
20 Chapter 9, Section 32, as amended) is amended to read:

21 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the  
22 gasoline tax due, the following amounts of gasoline may be  
23 deducted from the total amount of gasoline received in New  
24 Mexico during the tax period, provided satisfactory proof  
25 thereof is furnished to the department:

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1           A. gasoline received in New Mexico, but exported  
2 from this state by a rack operator, distributor or wholesaler  
3 other than in the fuel supply tank of a motor vehicle or sold  
4 for export by a rack operator or distributor; provided that, in  
5 either case:

6                   (1) the person exporting the gasoline is  
7 registered in or licensed by the destination state to pay that  
8 state's gasoline or equivalent fuel tax;

9                   (2) proof is submitted that the destination  
10 state's gasoline or equivalent fuel tax has been paid or is not  
11 due with respect to the gasoline; or

12                   (3) the destination state's gasoline or  
13 equivalent fuel tax is paid to New Mexico in accordance with  
14 the terms of an agreement entered into pursuant to Section  
15 9-11-12 NMSA 1978 with the destination state;

16           B. gasoline received in New Mexico sold to the  
17 United States or [~~any~~] an agency or instrumentality thereof for  
18 the exclusive use of the United States or [~~any~~] an agency or  
19 instrumentality thereof. Gasoline sold to the United States  
20 includes gasoline delivered into the supply tank of a  
21 government-licensed vehicle of the United States;

22           C. gasoline received in New Mexico sold to an  
23 Indian nation, tribe or pueblo or [~~any~~] a political  
24 subdivision, agency or instrumentality of that Indian nation,  
25 tribe or pueblo for the exclusive use of the Indian nation,

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1     tribe or pueblo or [~~any~~] a political subdivision, agency or  
2     instrumentality thereof. Gasoline sold to an Indian nation,  
3     tribe or pueblo includes gasoline delivered into the supply  
4     tank of a government-licensed vehicle of the Indian nation,  
5     tribe or pueblo;

6             D. gasoline received in New Mexico, dyed in  
7     accordance with department regulations and used in [~~any~~] a  
8     manner other than for propulsion of motor vehicles on the  
9     highways of this state or motorboats or activities ancillary to  
10    that propulsion;

11            E. gasoline received in New Mexico and sold at  
12    retail by a registered Indian tribal distributor if:

13                    (1) the sale occurs on the Indian reservation,  
14    pueblo grant or trust land of the distributor's Indian nation,  
15    tribe or pueblo;

16                    (2) the gasoline is placed into the fuel  
17    supply tank of a motor vehicle on that reservation, pueblo  
18    grant or trust land; and

19                    (3) the Indian nation, tribe or pueblo has  
20    certified to the department that it has in effect an excise,  
21    privilege or similar tax on the gasoline; provided that the  
22    volume of gasoline deducted pursuant to this subsection shall  
23    be the total gallons sold in accordance with the provisions of  
24    this subsection multiplied by a fraction the numerator of which  
25    is the rate of the tribal tax certified to the department by

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1 the Indian nation, tribe or pueblo and the denominator of which  
2 is the rate of the gasoline tax imposed pursuant to the  
3 Gasoline Tax Act, but if the fraction exceeds one, it shall be  
4 one for purposes of determining the deduction; ~~and~~

5 F. gasoline received in New Mexico and sold by a  
6 registered Indian tribal distributor from a nonmobile storage  
7 container located within that distributor's Indian reservation,  
8 pueblo grant or trust land for resale outside that  
9 distributor's Indian reservation, pueblo grant or trust land;  
10 provided the department certifies that the distributor claiming  
11 the deduction sold no less than one million gallons of gasoline  
12 from a nonmobile storage container located within that  
13 distributor's Indian reservation, pueblo grant or trust land  
14 for resale outside that distributor's Indian reservation,  
15 pueblo grant or trust land during the period of May through  
16 August 1998; and provided further that the amount of gasoline  
17 deducted by a registered Indian tribal distributor pursuant to  
18 this subsection shall not exceed two million five hundred  
19 thousand gallons per month, calculated as a monthly average  
20 during the calendar year. Volumes deducted pursuant to  
21 Subsection E of this section shall not be deducted pursuant to  
22 this subsection; and

23 G. gasoline received in New Mexico on which New  
24 Mexico gasoline tax was paid by the out-of-state terminal at  
25 which the gasoline was loaded, provided that documentation that

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1 the gasoline was to be imported into New Mexico was provided to  
2 the terminal operator by the person receiving the fuel."

3 Section 2. A new section of the Weight Distance Tax Act  
4 is enacted to read:

5 "[NEW MATERIAL] TAXPAYERS OF WEIGHT DISTANCE TAX--SURETY  
6 BOND REQUIRED--EXCEPTIONS.--

7 A. Except as required in Subsection H of this  
8 section, every taxpayer with a commercial domicile not located  
9 in an International Fuel Tax Agreement jurisdiction or deemed  
10 by the secretary to be in danger of default of reports required  
11 to be filed or of weight distance taxes due shall file with the  
12 department a bond on a form approved by the attorney general  
13 with a surety company authorized by the public regulation  
14 commission to transact business in New Mexico as a surety and  
15 upon which bond the taxpayer is the principal obligor and the  
16 state the obligee. The bond shall be conditioned upon the  
17 prompt filing of true reports and the payment by the taxpayer  
18 to the department of all taxes levied by the Weight Distance  
19 Tax Act, together with all applicable penalties and interest on  
20 the taxes.

21 B. In lieu of the bond, the taxpayer may elect to  
22 file with the department cash or bonds of the United States or  
23 New Mexico or of any political subdivision of the state.

24 C. The total amount of the bond, cash or securities  
25 required of a taxpayer shall be fixed by the department and may

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1 be increased or reduced by the department at any time, subject  
2 to the limitations provided in this section.

3 D. In fixing the total amount of the bond, cash or  
4 securities required of a taxpayer required to post a bond, the  
5 department shall require an amount equivalent to the total  
6 estimated tax due for two quarters; provided, however, that the  
7 total amount of bond, cash or securities required of a taxpayer  
8 shall never be less than five hundred dollars (\$500) per motor  
9 vehicle on which the weight distance tax is imposed.

10 E. In the event the department determines that the  
11 amount of the existing bond, cash or securities is insufficient  
12 to ensure payment to New Mexico of the amount of the weight  
13 distance tax and penalties and interest for which a taxpayer is  
14 or may at any time become liable, the taxpayer, upon written  
15 demand from the department mailed to the last known address of  
16 the taxpayer as shown on the records of the department, shall  
17 file an additional bond, cash or securities in the manner, form  
18 and amount determined by the department to be necessary to  
19 secure at all times the payment by the taxpayer of all taxes,  
20 penalties and interest due pursuant to the Weight Distance Tax  
21 Act.

22 F. A surety on a bond furnished by a taxpayer as  
23 required by this section shall be released and discharged from  
24 all liability accruing on the bond after the expiration of  
25 ninety days from the date upon which the surety files with the

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1 department a written request to be released and discharged;  
2 provided, however, that the request shall not operate to  
3 release or discharge the surety from liability already accrued  
4 or that shall accrue before the expiration of the ninety-day  
5 period, unless a new bond is filed during the ninety-day  
6 period, in which case the previous bond may be canceled as of  
7 the effective date of the new bond. On receipt of notice of  
8 the request to cancel the bond due to filing of a new bond, the  
9 department shall promptly notify the taxpayer who furnished the  
10 bond that the taxpayer, on or before the expiration of the  
11 ninety-day period, shall file with the department a new bond  
12 with a surety satisfactory to the department in the amount and  
13 form required in this section.

14 G. A taxpayer who is required to file a bond with  
15 or provide cash or securities to the department in accordance  
16 with this section and who is required by another state law to  
17 file another bond with or provide cash or securities to the  
18 department may elect to file a combined bond or provide cash or  
19 securities applicable to the provision of both this section and  
20 the other law, with the approval of the secretary. The amount  
21 of the combined bond, cash or securities shall be determined by  
22 the department, and the form of the combined bond shall be  
23 approved by the attorney general.

24 H. A taxpayer who is required to file a bond  
25 pursuant to the provisions of this section and who for the

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1 eight consecutive quarters preceding the date of request has  
2 not been a delinquent taxpayer pursuant to the Weight Distance  
3 Tax Act may request to be exempt from the requirement to file a  
4 bond beginning with the first day of the first quarter  
5 following the end of the eight-quarter period. If a taxpayer  
6 exempted pursuant to this subsection subsequently becomes a  
7 delinquent taxpayer, the department may terminate the exemption  
8 and require the filing of a bond in accordance with this  
9 section. If the department terminates the exemption, the  
10 termination shall not be effective any earlier than ten days  
11 after the date the department notifies the taxpayer in writing  
12 of the termination.

13 I. As used in this section, "taxpayer" means a  
14 registrant, owner or operator of a motor vehicle on whom the  
15 weight distance tax is imposed."

16 Section 3. Section 7-16A-10 NMSA 1978 (being Laws 1992,  
17 Chapter 51, Section 10, as amended) is amended to read:

18 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL  
19 FUEL SUPPLIERS.--In computing the tax due, the following  
20 amounts of special fuel may be deducted from the total amount  
21 of special fuel received in New Mexico during the tax period,  
22 provided that satisfactory proof thereof is furnished to the  
23 department:

24 A. special fuel received in New Mexico, but  
25 exported from this state by a rack operator, special fuel

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1 supplier or dealer, other than in the fuel supply tank of a  
2 motor vehicle or sold for export by a rack operator or  
3 distributor; provided that, in either case:

4 (1) the person exporting the special fuel is  
5 registered in or licensed by the destination state to pay that  
6 state's special fuel or equivalent fuel tax;

7 (2) proof is submitted that the destination  
8 state's special fuel or equivalent fuel tax has been paid or is  
9 not due with respect to the special fuel; or

10 (3) the destination state's special fuel or  
11 equivalent fuel tax is paid to New Mexico in accordance with  
12 the terms of an agreement entered into pursuant to Section  
13 9-11-12 NMSA 1978 with the destination state;

14 B. special fuel sold to the United States or any  
15 agency or instrumentality thereof for the exclusive use of the  
16 United States or any agency or instrumentality thereof.

17 Special fuel sold to the United States includes special fuel  
18 delivered into the supply tank of a government-licensed  
19 vehicle;

20 C. special fuel sold to the state of New Mexico or  
21 any political subdivision, agency or instrumentality thereof  
22 for the exclusive use of the state of New Mexico or any  
23 political subdivision, agency or instrumentality thereof.

24 Special fuel sold to the state of New Mexico includes special  
25 fuel delivered into the supply tank of a government-licensed

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1 vehicle;

2 D. special fuel sold to an Indian nation, tribe or  
3 pueblo or any agency or instrumentality thereof for the  
4 exclusive use of the Indian nation, tribe or pueblo or any  
5 agency or instrumentality thereof. Special fuel sold to an  
6 Indian nation, tribe or pueblo includes special fuel delivered  
7 into the supply tank of a government-licensed vehicle;

8 E. special fuel dyed in accordance with federal  
9 regulations; ~~and~~

10 F. special fuel that is number 2 diesel fuel sold  
11 for the generation of power to propel a vehicle authorized by  
12 contract with the public education department as a school bus;  
13 provided that the fuel has a distillation temperature of five  
14 hundred degrees Fahrenheit at a ten percent recovery point and  
15 six hundred forty degrees Fahrenheit at a ninety percent  
16 recovery point; and

17 G. special fuel received in New Mexico on which New  
18 Mexico special fuel excise tax was paid by the out-of-state  
19 terminal at which the special fuel was loaded, provided that  
20 documentation that the special fuel was to be imported into New  
21 Mexico was provided to the terminal operator by the person  
22 receiving the fuel."

23 Section 4. A new section of the Special Fuels Supplier  
24 Tax Act is enacted to read:

25 "[NEW MATERIAL] SPECIAL FUEL USERS--SURETY BOND REQUIRED--

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1       EXCEPTIONS.--

2               A.   Except as required in Subsection H of this  
3 section, every special fuel user with a commercial domicile not  
4 located in an International Fuel Tax Agreement jurisdiction or  
5 deemed by the secretary to be in danger of default of reports  
6 required to be filed or of special fuel excise taxes due shall  
7 file with the department a bond on a form approved by the  
8 attorney general with a surety company authorized by the public  
9 regulation commission to transact business in New Mexico as a  
10 surety and upon which bond the special fuel user is the  
11 principal obligor and the state the obligee.  The bond shall be  
12 conditioned upon the prompt filing of true reports and the  
13 payment by the special fuel user to the department of all taxes  
14 levied by the Special Fuels Supplier Tax Act, together with all  
15 applicable penalties and interest on the taxes.

16               B.   In lieu of the bond, the special fuel user may  
17 elect to file with the department cash or bonds of the United  
18 States or New Mexico or of any political subdivision of the  
19 state.

20               C.   The total amount of the bond, cash or securities  
21 required of a special fuel user shall be fixed by the  
22 department and may be increased or reduced by the department at  
23 any time, subject to the limitations provided in this section.

24               D.   In fixing the total amount of the bond, cash or  
25 securities required of a special fuel user required to post a

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1 bond, the department shall require an amount equivalent to the  
2 total estimated tax due for two quarters; provided, however,  
3 that the total amount of bond, cash or securities required of a  
4 special fuel user shall never be less than five hundred dollars  
5 (\$500).

6 E. In the event the department determines that the  
7 amount of the existing bond, cash or securities is insufficient  
8 to ensure payment to New Mexico of the amount of the special  
9 fuel excise tax and penalties and interest for which a special  
10 fuel user is or may at any time become liable, the special fuel  
11 user, upon written demand from the department mailed to the  
12 last known address of the special fuel user as shown on the  
13 records of the department, shall file an additional bond, cash  
14 or securities in the manner, form and amount determined by the  
15 department to be necessary to secure at all times the payment  
16 by the special fuel user of all taxes, penalties and interest  
17 due pursuant to the Special Fuels Supplier Tax Act.

18 F. A surety on a bond furnished by a special fuel  
19 user as required by this section shall be released and  
20 discharged from all liability accruing on the bond after the  
21 expiration of ninety days from the date upon which the surety  
22 files with the department a written request to be released and  
23 discharged; provided, however, that the request shall not  
24 operate to release or discharge the surety from liability  
25 already accrued or that shall accrue before the expiration of

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1 the ninety-day period, unless a new bond is filed during the  
2 ninety-day period, in which case the previous bond may be  
3 canceled as of the effective date of the new bond. On receipt  
4 of notice of the request to cancel the bond due to filing of a  
5 new bond, the department shall promptly notify the special fuel  
6 user who furnished the bond that the special fuel user, on or  
7 before the expiration of the ninety-day period, shall file with  
8 the department a new bond with a surety satisfactory to the  
9 department in the amount and form required in this section.

10 G. A special fuel user who is required to file a  
11 bond with or provide cash or securities to the department in  
12 accordance with this section and who is required by another  
13 state law to file another bond with or provide cash or  
14 securities to the department may elect to file a combined bond  
15 or provide cash or securities applicable to the provision of  
16 both this section and the other law, with the approval of the  
17 secretary. The amount of the combined bond, cash or securities  
18 shall be determined by the department, and the form of the  
19 combined bond shall be approved by the attorney general.

20 H. A special fuel user who is required to file a  
21 bond pursuant to the provisions of this section and who for the  
22 eight consecutive quarters preceding the date of request has  
23 not been delinquent filing reports or paying special fuel  
24 excise taxes pursuant to the Special Fuels Supplier Tax Act may  
25 request to be exempt from the requirement to file a bond

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1 beginning with the first day of the first quarter following the  
2 end of the eight-quarter period. If a special fuel user  
3 exempted pursuant to this subsection subsequently becomes  
4 delinquent, the department may terminate the exemption and  
5 require the filing of a bond in accordance with this section.  
6 If the department terminates the exemption, the termination  
7 shall not be effective any earlier than ten days after the date  
8 the department notifies the special fuel user in writing of the  
9 termination."

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